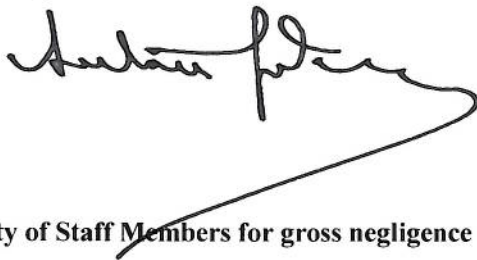


**Inter-Office Memorandum No. 086/2012**  
**Field Office Memorandum No. 087/2012**

**To/à:** All Staff Members at Headquarters and in the Field

**From/de:** High Commissioner 

**Ref./références:** ADM-01-01

**Date/date:** 16 November 2012

**Title/titre:** **Financial Responsibility of Staff Members for gross negligence**

The High Commissioner, for the purpose of implementing United Nations financial rule 101.2<sup>1</sup> as well as United Nations High Commissioner for Refugees (UNHCR) financial rule 13.1<sup>2</sup> with respect to responsibility and accountability, hereby promulgates the following:

## **Section 1**

### **General**

1.1 The present instruction defines the conditions for implementing the United Nations financial rule 101.2 and UNHCR financial rule 13.1, under which any staff member who contravenes the United Nations Financial Regulations and Rules or the UNHCR Financial Rules or corresponding instructions, may be held personally accountable and financially liable for his or her actions.

1.2 The provisions of the present instruction are based on the distinction between:

- (a) Instances where a financial loss suffered by the Organization results from simple negligence, in which case no financial recovery against staff members shall be undertaken and any deficiencies on the part of the officials involved shall be addressed through administrative and/or performance management mechanisms; and
- (b) Instances where a financial loss suffered by the Organization results from gross negligence. Financial responsibility in such instances shall be established in accordance with the provisions set out in the present instruction.

1.3 For the purposes of the present instruction:

- (a) “negligence” is the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation;

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<sup>1</sup> ST/SGB/2003/7 and Amend.1

<sup>2</sup> A/AC.96/503/Rev.10

- (b) “simple negligence” is negligence in which the staff member is not aware of the failure to apply the regulations and rules of the Organization, but should have foreseen and avoided it; and
- (c) “gross negligence” is negligence involving a wilful or reckless failure to act as a reasonable person in applying or in failing to apply the regulations and rules of the Organization.

1.4 Cases where losses result from gross negligence as defined above may also give rise to disciplinary proceedings under chapter X of the United Nations’ Staff Rules. In order to ensure consistency of findings and protection of the due process rights of the staff member involved, disciplinary action and recovery action for financial losses shall be consolidated wherever grounds exist to initiate both actions.

1.5 The present instruction shall in no way be construed to restrict the High Commissioner’s authority under the performance management system or in the context of administrative and/or disciplinary measures, including where a failure of a staff member to apply the regulations and rules of the Organization does not result in immediate financial loss.

## **Section 2**

### **Scope**

2.1 The present instruction shall apply to cases of gross negligence in the application of the United Nations Staff Regulations and Rules and of the United Nations Financial Regulations and Rules, as well as UNHCR’s Financial Rules and any related instructions of the High Commissioner implementing those Regulations and Rules.

2.2 The present instruction shall not apply to recovery from staff members of overpayments made to them in excess of their entitlements, which is governed by the provisions of ST/AI/2009/1.

## **Section 3**

### **Investigation**

3.1 When a staff member has reason to believe that the gross negligence of another staff member may have led or may lead to financial loss to the Organization or receives credible allegations to that effect, he or she shall immediately inform the Representative or Director of a potential breach of UNHCR’s or the UN’s financial regulations and rules or any other relevant administrative regulations, rules and policies of UNHCR.<sup>3</sup>

3.2 The Director or the Representative shall immediately report the case to the Controller as well as the Inspector General and take the necessary steps to secure available evidence. He or she shall not conduct any further investigation without clear instructions from the Controller or the Inspector General.

3.3 If the staff member has reasons to believe that the Representative or Director is implicated in the breach of the relevant regulation or rule, he/she shall directly report to the Controller and the Inspector General.

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<sup>3</sup> This provision is without prejudice to para 28 of IOM 009/2012 – FOM 010/2012 of 7 February 2012 on “The role, functions and modus operandi of the IGO” which refers to the obligation of all staff to report all instances of possible misconduct.



3.4 The Controller and the Inspector General will jointly agree whether an investigation is required. If so, the investigation shall be conducted adhering to the procedural standards set out in IOM/09-FOM/10/2012 of 7 February 2012 on "The role, functions and modus operandi of the IGO". It shall normally be completed within six months unless extraordinary circumstances justify completion at a later stage.

3.5 Administrative leave pending investigation may apply, in accordance with Staff Rule 10.4.

3.6 If the staff member under investigation separates or is due to separate from service before the conclusion of the proceedings under section 4 below, the Director, Division of Human Resources Management, at his or her own initiative or at the request of the Controller or the Inspector General, may authorize the withholding of final separation payments until the proceedings have been concluded.

3.7 The investigation report, together with supporting evidence and a computation of the amount of the financial loss involved shall be submitted by the Controller and the Inspector General to the Director, Division of Human Resources Management.

## **Section 4**

### **Action following investigation**

4.1 After analysis of the investigation report, together with the supporting evidence and a computation of the amount of the financial loss involved, the Director of Human Resources Management, after consultation with the Controller and the Inspector General, shall decide whether the allegations of gross negligence appear to be substantiated. If the allegations are not substantiated, the staff member and the Division, Bureau or Office concerned shall be informed in writing that the case for recovery is closed and that the evidence does not support recovery action and/or the allegations of gross negligence.

4.2 If the allegations appear to be substantiated, the Director, DHRM shall:

- (a) Inform the staff member in writing of the allegations of gross negligence and resulting financial loss, and of his or her right to respond;
- (b) Provide the staff member with a copy of the documentary evidence of the gross negligence, a computation of the resulting financial loss, which the Organization proposes to recover, and an explanation of the basis on which the computation was made; and
- (c) Notify the staff member of his or her right to seek the assistance of counsel in his or her defense through the Office of Staff Legal Assistance, or from outside counsel at his or her own expense.

4.3 The staff member shall be given a specified time to answer the allegations and produce countervailing evidence, if any. The amount of time allowed shall take into account the seriousness and complexity of the matter. The Director, DHRM or his/her designated official may grant an extension of the time limit upon the staff member's written request, which shall give cogent reasons why he or she is unable to comply with the deadline. If no response is submitted within the time limit, the matter shall nevertheless proceed.

4.4 Upon expiration of the specified time, the Director, DHRM, in consultation with the Controller and the Inspector General, shall consider the entire dossier including any observations by the staff member and take one of the following actions, as appropriate:

- (a) Decide that the case should be closed and inform the staff member and the division, bureau, or office concerned to that effect; or
- (b) Submit the entire dossier to the High Commissioner under cover of a recommendation to:
  - (i) Order the recovery of the financial loss in full or part, taking into account any relevant aggravating or mitigating factors; and/or
  - (ii) impose a disciplinary measure pursuant to Staff Rule 10.2(a), if he or she considers that the failure to apply the regulations and rules of the Organization amounts to misconduct, and the circumstance of the case justify the imposition of such measure.

4.5 The Director, DHRM shall transmit the High Commissioner's decision on the recommendation to the staff member concerned. The letter to the staff member shall set out the applicable procedure for a potential recourse under Chapter XI of the Staff Regulations and Rules and IOM/FOM/34/2009, in particular that a management evaluation is required with respect to an order of recovery, whereas disciplinary measures can be challenged directly before the UNDT.

4.6 Once the amount of the financial loss has been established, the staff member may, at any time agree in advance to the recovery by the Organization of the full amount or, in exceptional cases, to a specified amount established by the Director, DHRM, in consultation with the Controller. The staff member shall be assisted by a counsel in deciding on this voluntary recovery, unless he or she specifically declines such assistance. An agreement between the staff member and the Administration on the recovery does not exclude the imposition of a disciplinary measure for misconduct.

## **Section 5**

### **Final provision**

The present instruction shall enter into force on 16/11/2012.